

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

KOFFEE KUP BAKERY, INC.

CASE #62609

**DECISION OF THE HEARING OFFICER**

**APPEARANCES (TELEPHONICALLY):** The claimant, [REDACTED] appeared pro se.  
The employer, Koffee Kup Bakery, Inc., failed to appear.

**NATURE OF DISPUTE:** RSA 275:43 I-Weekly, unpaid wages.

**DATE OF HEARING:** June 30, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The New Hampshire Department of Labor file reflects that a wage claim in the amount of \$900.00 was filed by the claimant on May 4, 2021. A notice of wage claim was mailed to the employer on May 7, 2021. A hearing was scheduled in this matter and a hearing notice was mailed to the parties on June 7, 2021.

A formal hearing was held on June 30, 2021. As this hearing was proceeding telephonically, at the start of the hearing, the claimant was called and then the employer was called. The number the employer was called at was 802-862-2696. After ringing, the automated response was that the number was disconnected or no longer in service. The claimant stated that he had no other telephone numbers at which to contact the employer. After waiting fifteen minutes after the start time of the hearing, the employer was called again at the above reference number with the same result.

Notice of Hearing had been sent via mail to the employer at two addresses, neither of which was returned as undeliverable. This Hearing Officer determined that the employer received proper notice. Despite having proper notice, the employer could not be reached at the time of hearing, nor did the employer attempt to contact the Department at the start of the hearing; after waiting fifteen minutes, pursuant to Lab Rule 203.04, the hearing proceeded in the employer's absence. Live telephonic testimony was provided by the claimant.

## FINDINGS OF FACT

The claimant worked for the employer for about six years; this was a second job for him. His end date with the employer was when the employer closed, around April 26th. The claimant testified that he was a bread vendor for the employer and that every shift he worked was paid \$180.00.

The claimant testified that he is missing five weeks of pay, specifically the weeks of March 20th, March 27th, April 10th, April 17th, and April 24th. The claimant submitted documents to include text messages between himself and his supervisor, supporting that he worked the shifts that he is seeking money for. The text messages also reflect that the claimant questioned his supervisor about inconsistent payment.

Included in the claimant's submissions are documents with a heading of vendor number and vendor name. These documents reflect that the claimant was paid \$180.00 for each date on the document. There are no deductions reflected on the documents.

In regards to the claimant receiving a 1099 form, he testified that although he received a 1099, he worked specifically for the employer, they directed his work, the days he worked, the stores he serviced, and how he did the recaps. The claimant stated that his payment came from the employer's accounting payroll and he received weekly checks. As of the date of hearing, the claimant testified that he has not been paid the wages he is seeking.

## DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he is owed the wages claimed. Proof by a preponderance of the evidence is defined in Lab 202.05 as a demonstration by admissible evidence that a fact or legal conclusion is more probably than not.

The claimant argued that the employer owes him for five weeks of pay at \$180.00 a week, for a total of \$900.00.

The claimant was a credible and forthright witness. His testimony that he worked for five weeks and did not receive pay is accepted. The text messages support the claimant's testimony. In regards to the fact that the claimant received a 1099, he testified that his work was directed by the employer. Further, the employer did not appear at hearing and rebut the employer-employee presumption. As such, it is found that the claimant was an employee of the employer. Based on the totality of the evidence, it is determined that the claimant has met his burden of proof in this matter.

**DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$900.00.

The employer is hereby ordered to send a check to this Department, payable to ██████████ in the amount of \$900.00, less any applicable taxes, within 30 days of the date of this Order.

July 20, 2021  
Date of Decision

*Daisy Mongeau*  
Daisy Mongeau, Hearing Officer

DAM/cb